

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 98-cr-40005-JPG
)
LEE FLOYD KIBLER,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Lee Floyd Kibler's *pro se* Motion for Leave to Appeal *in Forma Pauperis* (Doc. 247).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3) (2006); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Here, Kibler has not fully filled out the application to proceed *in forma pauperis*, which also provides the boilerplate of the instant motion. Namely, Kibler has not explained “[t]he nature of [his] action, defense, or other proceeding or the issues [he] intend[s] to present on

appeal" (Doc. 247, p. 1). Of course, without this explanation, the Court is unable to determine whether Kibler's appeal is non-frivolous or made in good faith.

Moreover, the Court notes that the underlying appeal represents Kibler's fourth direct attempt to reverse his criminal conviction, in addition to the habeas petition brought under 28 U.S.C. § 2255. *See Kibler v. USA*, Case No. 03-cv-4154-JPG (S.D. Ill. Sept. 4, 2003). This posture itself raises serious doubts as to the meritoriousness of the instant appeal and will likely prove preclusive if the motion to appeal *in forma pauperis* is re-filed.¹

For the foregoing reasons, the Court **DENIES** the instant motion (Doc. 247).

IT IS SO ORDERED.
DATED: June 14, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE

¹The Court makes no determination as to whether Kibler is indigent.